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RECREATIONAL USERS AND OWNER LIABILITY

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What can and should you do when and if hunters, snowmobilers, skiers, campers, fishermen and others ask to use your property? In this age where everyone seems to want to take everyone else to court, none can afford a lawsuit merely because someone is allowed to fish, hunt or snowmobile on your property.

When There Is An Injury

If an injury does occur there are three things which the injured party must prove against the land owner or land rentor in order to establish actionable negligence and therefore liability. They are: 1) The existence of a duty, 2) a breach of the duty, and 3) an injury resulting proximately from the breach.¹ If the land owner has a duty, has breached that duty and an injury results because of the breach of the duty, the land owner can be sued.

Ohio Law Encourages the Use of Land For Recreation By Limiting Liability of the Land Owner

But not to despair, the Ohio Revised Code, Section 1533.18 and Section 1533.181, and many Ohio courts have defined and set the standards for what are called "recreational users." A recreational user is: 1) A person who has been given permission by the owner, lessee or occupant of the land to enter the premises, 2) for the purpose of personally engaging in a recreational pursuit, 3) without paying a fee to enter the land.²

The owner, lessee or occupant does not owe any duty to a recreational user to keep the premises safe for entry or use. When permission is given to a recreational user to enter, assurance that the premises are safe is not implied. Responsibility or liability for any bodily injury incurred or property damage caused by the recreational user is not assumed by the

¹Meniffee v. Ohio Welding Products, Inc., 15 Ohio St.3d 75, 472 N.E.2d 707 (1984).

²ORC 1533.18.

(B) "Recreational user" means a person to whom permission has been granted, without the payment of a fee or consideration to the owner, lessee, or occupant of premises, other than a fee or consideration paid to the state or any agency thereof, to enter upon premises to hunt, fish, trap, camp, hike, swim, or engage in other recreational pursuits.

person giving permission to enter the land.³

In Ohio if you, the land owner, rentor or occupant (referred to in this article as the land possessor), give permission for someone to recreate (play) on the land, no duty is owed and no liability is incurred as far as safety hazards are involved. However, situations which amount to traps or hidden dangers unknown to the recreation user but known to the land owner may bring about liability for injuries which are caused by the trap or hidden danger.⁴ However, the land possessor must not be indifferent to the possibility of injury.⁵

A recreational user must request permission. If the owner, occupier or lessee invites someone to enter, the duty of care changes immediately from no duty to one of ordinary care to maintain the premises in a reasonably safe condition.⁶ With an invitation the status of the user changes from recreational user to invitee or social guest.⁷

30RC 1533.181 Exemption from liability to recreational users.

(A) No owner, lessee, or occupant of premises:

(1) Owes any duty to a recreational user to keep the premises safe for entry or use;

(2) Extends any assurance to a recreational user, through the act of giving permission, that the premises are safe for entry or use;

(3) Assumes responsibility for or incurs liability for any injury to person or property caused by any act of a recreational user.

⁴Brown v. Rechel, 108 O App 347, 161 NE2d 638 (1959).

⁵Mason Tire & Rubber Co. v. Lansinger, 15 O App 310, affd 108 OS 377, 140 NE 770 (1923).

⁶Englehardt v. Philipps, 136 OS 73, 23 NE2d 829, 831 (1939), held that a person who goes on the land or premises at the owner's express or implied invitation is an "invitee".

⁷Durst v. Van Gundy, 8 Ohio App. 3d 72, 455 N.E. 2d 1319 (1982). One invited to come upon the premises of another for the purpose of performing a specific service for the invitor's benefit is an invitee. The court distinguished this from the situation where a person enters the premises as an invited social guest for the purpose of participating in a social occasion.

In the case of a social guest a higher duty is placed upon the land possessor; that is not only must ordinary care not to cause injury but, a duty to warn of any condition which could reasonably be considered dangerous.

As always, there are exceptions and clarifications which must be addressed when a rule is established. At the outset, it must be noted that if the defendant land possessor does not raise the defense of recreational user the court may do it for him.⁸

Definition of Recreational Pursuit

What does personally engaged in a recreational pursuit mean?⁹ Hunting, fishing, trapping, camping, biking, swimming, are explicitly mentioned in the statute.¹⁰ Sledding,¹¹ horseback riding,¹² and sitting on a beach watching others swim,¹³ all have been found to be specifically recreational. Recreational pursuits may be any activity which anyone thinks is play.¹⁴

⁸In Buck v. Ohio Court of Appeals, Ninth Judicial District, 554 F2d 766 (1977), the plaintiff had prevailed in a jury trial in a negligence action arising out of a swimming accident. On appeal the Ohio Court of Appeals raised the question as to whether ORC 1533.18 and 1533.181 were applicable. Counsel for plaintiff and defendant agreed that the statutes were not relevant. Subsequently, the court reversed and held that the recreational user statutes were controlling.

⁹ORC 1533.181.

¹⁰ORC 1533.18.

¹¹Marrek v. Cleveland Metroparks, 9 Ohio St 3d 194, 459 NE2d 873 (1984).

¹²Crabtree v. Shultz, 57 0 App2d 33, 384 NE2d 1294 (1977).

¹³Fetherolf v. State Dept. of Natural Resources, 7 0 App3d 110, 454 NE2d 564 (1982).

¹⁴In M. Schneider v. United States of America Acadia National Park, 760 F2d 366 (1985), a Maine statute very similar to Ohio's recreational user statutes was interpreted; the court cited the Ohio case Fetherolf supra. In this case the plaintiff stopped for a cup of coffee, saw a sign "Sand Beach" and was subsequently injured upon venturing upon the beach. The action was brought because coffee drinking was not specifically listed. The court held that "the list does not purport to be complete, but is only illustrative. Any number of clearly recreational activities from bird watching to sunbathing suggest themselves as recreation."

Charging a Fee

A person is not a recreational user if he pays a fee or consideration to enter upon the premises.¹⁵ It has been held that charging for items such as rental equipment will not negate the duty owed, so long as a fee to enter is not charged.¹⁶

But what is a fee or consideration? Consideration may be money, goods, rights, interest or a benefit bestowed upon a party.¹⁷ If you are given a ride on a snowmobile so that the snowmobile owner may ride on your property -- that could be consideration. If the hunter gives you a portion of the deer he shoots on your property in return for permission to hunt -- that may be consideration. If you expect the fisherman to give a portion of the fish caught on your property in return for the favor of fishing -- that may be consideration.

Conclusion

You may owe the recreational user less of a duty than anyone else when it comes to being liable for injuries on your property; just make sure you don't cross the line and allow the visitor to your land to become a social guest or an invitee without being aware of the higher duty you will owe, which may lead to liability for any injury incurred.¹⁸

¹⁵Huth v. State, Dept. of Natural Resources, 64 Ohio St.2d 143, 413 N.E.2d 1201 (1980). The plaintiffs were not recreational users because they paid an entrance or admittance fee.

¹⁶Moss v. Dept. of Natural Resources, 62 OS2d 138, 404 NE2d 742 (1980).

¹⁷Black's Law Dictionary, 5th Ed.

¹⁸See Liability of Property Owners to Various Visitors, Paul L. Wright, Ohio Cooperative Extension Service, OAL 016-5, FMH XVIII 322, ESO 897, AGDEX 817.